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(092585-0107)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Eugene George OLCZAK
Title: JOINED MULTIFUNCTIONAL
OPTICAL DEVICE
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Examiner: Alicia Ann Chevalier
Art Unit: 1794
Confirmation Number: 8697

PRE-APPEAL BRIEF REQUEST FOR REVIEW

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Commissioner for Patents
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Sir:

In accordance with the **Pre-Appeal Brief Conference Pilot Program**, announced July 11, 2005, this Pre-Appeal Brief Request for Review is being filed together with a Notice of Appeal. This Pre-Appeal Brief Request for Review is responsive to the Final Office Action dated July 9, 2008. Claims 2-13, 29-33 and 35-38 are pending in this application.

Rejection Under 35 U.S.C. § 103

Claims 2-13, 29-33 and 35-38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 4,025,159 to McGrath (“McGrath”) in view of U.S. Patent 5,657,162 to Nilsen (“Nilsen”). Applicant respectfully traverses this rejection for at least the following reasons.

Claims 33 and 36

Independent claim 33 recites “a first backlighting display component film having an upper surface and a lower surface, said upper surface of said first backlighting display component film comprising a series of optical structures” and “a second backlighting display component film having an upper surface and a lower surface, said upper surface of said second backlighting display

component film comprising a series of optical structures, said raised spacing structures contacting said lower surface of said second backlighting display component film.” Thus, in claim 33, (1) both the first backlighting display component film and the second backlighting display component film have an upper surface comprising a series of optical structures, and (2) the raised spacing structures of the first backlighting display component film contact the lower surface of the second backlighting display component film so as to provide a gap between the optical structures of the first backlighting display component film and the lower surface of the second backlighting display component film.

McGrath does not disclose at least this combination of features of claim 33.

McGrath discloses cellular reflective sheeting. In particular, McGrath discloses in FIGs. 1 and 3, sheeting 10 having a base sheet 11 with a layer of transparent microspheres 16, transparent cover sheet 12 and narrow intersecting bonds 13 attaching the base sheet to the cover sheet 12 (col. 3, lines 23-34). McGrath also discloses one embodiment in FIG. 5 where the cover sheet 25 has corner cubes and the basal sheet 26 appears to have microspheres. The Patent Office equates the microspheres 16 and the narrow intersecting bonds 13 with the optical structures, and raised spacing structures, respectively, as claimed. The Patent Office further notes that McGrath fails to disclose a second component film, but argues on page 3 of the Office Action that “it would have been obvious to one of ordinary skill in the art at the time of the invention to stack multiple layers of McGrath as taught by Nilsen in order to create design patterns.”

Applicant submits, however, that even if the cellular reflecting sheets of McGrath were stacked, for which the Examiner has not provided a proper reason that one skilled in the art would do so, such stacked sheets of McGrath would not have all the features of claim 33. That is, even if the cellular reflecting sheets of McGrath were stacked, such stacked sheets would not have the features of claim 33 where (1) both the first backlighting display component film and the second backlighting display component film have an upper surface comprising a series of optical structures, and (2) the raised spacing structures of the first backlighting display component film contact the lower surface of the second backlighting display component film so as to provide a gap between the optical structures of the first backlighting display component film and the lower surface of the second backlighting display component film. In the McGrath sheeting 10 of FIG. 3, the microspheres contact the cover film 12 (See col. 3, lines 58-60), and therefore in contrast to claim 33, there is no gap between the microspheres and its overlying layer provided by the intersecting bonds 13, even if the sheeting 10 are stacked.

Moreover, in contrast to claim 33, if two of the sheeting 10 as shown in FIG. 3 of McGrath were stacked, such stacked sheeting would not have any raised spacing structures from the upper surface of the lower sheeting contacting any essentially planar lower surface of the upper sheeting where the upper sheeting has an upper surface comprising a series of optical structures. In fact, there are no microspheres or raised spacing structures on the upper surface of the sheeting 10, so if even if the sheeting 10 were stacked, they would not have all the features of claim 33. Likewise, if the sheeting shown in FIGs. 4-8 were stacked, such stacked sheeting would not have the above mentioned combination of features (1) and (2), where the second backlighting display component film has an upper surface comprising a series of optical structures.

Independent claim 36 recites “a first backlighting display component film having an upper surface and a lower surface, said upper surface of said first backlighting display component film comprising a series of optical structures and a plurality of raised spacing structures, said lower surface being essentially planar; and a second backlighting display component film having an upper surface and a lower surface, said upper surface of said second backlighting display component film comprising a series of optical structures, said raised spacing structures contacting said lower surface of said second backlighting display component film”, and thus is patentable over McGrath and Nilsen for reasons analogous to claim 1.

Claim 35

Independent claim 35 recites “a backlight illumination source providing illumination to the multilayer backlighting display optical film.” In contrast, McGrath merely discloses a cellular retroreflective sheeting, but does not disclose any backlight illumination source providing illumination to its sheeting. On page 6 of the Office Action, the Patent Office states “since sunlight is a illumination source capable of back lighting McGrath article, McGrath anticipates the limitation.” The sun, however, is not part of the McGrath device, and thus McGrath does not disclose any illumination source as part of its optical device. Nilsen was cited for other features of the claims but fails to cure the deficiencies of McGrath.

Claim 37

Independent claim 37 recites “wherein at least one of said first backlighting display component film or said second backlighting display component film is a polarization recycling film.” By contrast, McGrath does not disclose that either of its basal sheet or its cover sheet have structure to be a polarization recycling film. The current Office Action does not address this feature of claim 27. On page 7 of the Office Action of July 13, 2007, however, the Patent Office states “McGrath is a

retroreflective article that concentrates the light, thus it is polarizing.” Applicant submits that an optical device that merely concentrates light does not necessarily polarize light. As an example, a mirror or a lens may be arranged to focus, and thus concentrate light, but such a focusing device, without more, would not be considered to polarize light. McGrath does not disclose that either of its basal sheet or its cover sheet function to polarize light, much less having a structure to be a polarization recycling film. Nilsen was cited for other features of the claims but fails to cure the deficiencies of McGrath.

Claim 38

Independent claim 38 recites “said component films being configured such that the optical structures of said component films are configured orthogonally.” By contrast, McGrath does not disclose that its basal sheet and its cover sheet are arranged relative to each other such that optical structures on the sheets are configured orthogonal to each other. On page 6 of the Office Action, the Patent Office states: “[a]s seen in figure 1 of McGrath the spacing structures, reference # 13, are configured in a grid with lines running horizontally and vertically. Figure 1 shows the optical structures are configured in the same manner.” Applicant submits that nowhere does McGrath discloses that its microspheres (equated by the Patent Office with the optical structures as claimed) are configured orthogonally in Figure 1. Whether or not lines of the grid of the bonds 13 of McGrath are orthogonal is not relevant to the requirements of claim 38, which requires that the optical structures of the component films are configured orthogonally. Nilsen also fails to disclose films where the optical structures on the sheets are configured orthogonal to each other, and thus fails to cure the deficiencies of McGrath

The dependent claims are patentable for at least the same reason as independent claim 33, from which they ultimately depend, as well as for further patentable features recited therein. For example, claim 5 recites “wherein said raised spacing structures comprise at least one post-structure.” McGrath fails to disclose this feature of claim 5. The narrow intersecting bonds 13 of McGrath do not include post structures, but instead are arranged as a grid-like structure to create cells (See FIG. 1). The intersections of the bonds are not posts but are part of the grid. Nilsen was cited for other features of the claims but fails to cure the deficiencies of McGrath.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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